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REMARKS

5 Claims 1-7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over
10 Salecker 5,309,595 in view of Block 6,448,732.

15 In the rejection, the Examiner stated that the patent to Salecker '595 discloses
20 all of the recited subject matter with the exception of a battery-powered cleaner device
25 comprising a motor that is DC and a rechargeable battery mounted on the frame for
 powering the DC motor. Applicants agree with the Examiner's assessment of Salecker
 '595 since Salecker '595 is a typical sewer and drain cleaner. Applicants do not claim
 to be the first inventors of a sewer and drain cleaner, but do believe that they are the
 first persons to provide a battery-powered sewer and drain cleaner.

30 The Examiner has attempted to combine the teachings of Block with the
35 teachings of Salecker in an effort to make applicants' battery-powered sewer and drain
 cleaner obvious under 35 U.S.C. § 103(a). In an effort to justify the combination of
 Salecker and Block, the Examiner has brushed aside the fact that applicants' invention
 is a sewer and drain cleaner by stating that Block is a cleaner device. Block is a
 cleaner device, but it is a portable suction cleaner of the vacuum cleaner type. There
 is a vast difference between vacuum cleaners and sewer and drain cleaners. Vacuum
 cleaners remove materials from rugs or the like by suction while sewer and drain
 cleaners of the type herein loosen roots, obstructions, etc., within pipes through the
 use of a flexible plumber's snake which is rotated in the clogged pipes. It is therefore
 contended by applicants that Block is not analogous art. It is not believed that a
 person working in the sewer and drain cleaning art would look to the vacuum cleaner

1 art such as Block. Applicants' contention that Block is non-analogous art is borne out
by the fact that the classifications of Block and Salecker are completely different as
were the fields of search.

5 In determining the difference between the prior art and the claims, the question
under 35 U.S.C. § 103 is not whether the differences themselves would have been
obvious, but whether the claimed invention as a whole would have been obvious.
Stratoflex Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983). A
prior art reference must be considered in its entirety, i.e., as a whole, including
10 portions that would lead away from the claimed invention. W.L. Gore & Associates
Inc. v. Garlock Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983). Distilling an
invention down to the "gist" or "thrust" of an invention disregards the requirement of
analyzing the subject matter "as a whole." *Id.*

15 Even more damaging to the Examiner's modification of Salecker is that the
Examiner has failed to point out any suggestion or motivation to modify the reference
in the manner suggested. MPEP § 2143.01. Obviousness can only be established by
combining or modifying the teachings of the prior art to produce a claimed invention
where there is some teaching, suggestion, or motivation to do so, found either
20 explicitly or implicitly in the references themselves or in the knowledge generally
available to one of ordinary skill in the art. *Id.* In Kotzab, 217 F.3d 1365, 1370, 55
USPQ2d 1313, 1317 (Fed. Cir. 2000), the Federal Circuit decided that the control of
multiple valves by a single sensor rather than by multiple sensors was a
25 technologically simple concept. However, the Federal Circuit held that there was no

1 finding as to the specific understanding or principle within the knowledge of the skilled
artisan that would have provided the motivation to use a single sensor as the system
to control more than one valve. *Id.*

5 The mere fact that a reference can be modified does not render the resulting
modification obvious unless the prior art also suggests the desirability of the
modification. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). "A
statement that modifications of the prior art to meet the claimed invention would have
been 'well within the ordinary skill of the art at the time that the claimed invention was
10 made because the references relied upon teach that all aspects of the claimed
invention were individually known in the art' is not sufficient to establish a *prima facie*
case of obviousness...." Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. &
Inter. 1993).

15 Regarding the present invention, the Examiner has failed to show any
suggestion or motivation to modify the Salecker reference. Therefore, applicants
assert that the structure of claim 1 would not have been obvious to one having
ordinary skill in the art at the time of the invention pursuant to 35 U.S.C. § 103(a).
Applicants contend that the electrocution hazard involved with AC sewer and drain
20 cleaners has been widely recognized for many years, but applicants are believed to be
the first persons to ever develop a battery-driven sewer and drain cleaner such as set
forth in claim 1. Suddenly, due to 20/20 hindsight, the Examiner believes that
applicants battery-powered sewer and drain cleaner as set forth in claim 1 would have
been obvious, although the Examiner has been unable to find a single piece of prior
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1 art wherein a sewer and drain cleaner has been controlled and driven by a low voltage
DC motor.

5 Claim 2 is dependent on claim 1 and adds the limitation thereto that the DC
motor is operatively connected to the drum by a belt drive. Even though Salecker
does teach that a belt drive is utilized, the motor of Salecker is not a DC motor.
Inasmuch as neither Salecker nor Block even remotely suggest that a DC motor could
be used on a sewer and drain cleaner of the type described, claim 2 is believed to be
allowable over Salecker and Block. Claim 2 is also believed to be allowable for the
10 reasons set forth with respect to claim 1.

15 Claim 3 depends from claim 1 and adds the limitation thereto that the DC motor
is operatively connected to the drum by a gear drive. Inasmuch as Salecker does not
teach a DC motor and does not teach that the drum could be driven by a gear drive,
applicants submit that claim 3 is allowable over Salecker and Block inasmuch as there
is absolutely no suggestion or teaching that the Salecker sewer and drain cleaner
could be driven by DC motor which was operatively connected to the drum by a gear
drive. Accordingly, claim 3 is believed to be allowable as set forth herein and for the
20 reasons set forth above with respect to claim 1.

25 Claim 4 depends from claim 1 and adds the limitation thereto that the battery
comprises a battery pack. There is absolutely no suggestion in Salecker that a sewer
and drain cleaner could be driven by a DC battery, let alone a DC battery pack. The
suggested modification of Salecker by means of the Block reference does not make
applicants' structure obvious to a person having ordinary skill in the art at the time of

1 the invention under 35 U.S.C. § 103(a). Claim 4 is also believed to be allowable for
the reasons set forth above with respect to claim 1.

5 Claim 5 depends from claim 1 and adds the limitation thereto that the DC motor
comprises a high speed, high torque motor. There is no mention whatsoever in
Salecker that the motor therein is a high speed, high torque motor. Further, there is no
mention whatsoever in Block that the motor therein could be a high speed, high torque
motor. Accordingly, as the references of record do not remotely teach or suggest that
the Salecker machine could be battery-operated, there can be no teaching or
10 suggestion that a DC motor could be used with a high speed, high torque motor. A
high speed, high torque motor is necessary to achieve the proper drain cleaning
function. Inasmuch as the prior art is devoid of any teaching that a sewer and drain
cleaner could be battery-powered, there can be no teaching or suggestion that a DC
motor would be a high speed, high torque motor. Therefore, the structure set forth in
15 claim 5 is believed to be allowable over Salecker and Block. Claim 5 is also believed
to be allowable for the reasons set forth with respect to claim 1.

20 Claim 6 depends from claim 1 and adds the limitation thereto that the battery-
powered sewer and drain cleaner of claim 1 is a low voltage DC motor. Applicants
incorporate the remarks set forth above in support of their contention that the use of a
low voltage DC motor to power a battery-powered sewer and drain cleaner would not
have been obvious under 35 U.S.C. § 103(a). Accordingly, claim 6 should be allowed.

25 Claim 6 is also believed to be allowable for the reasons set forth with respect to claim

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1 Claim 7 depends from claim 1 and adds the limitation thereto that the control
includes a motor and voltage control. Again, there is absolutely no suggestion
whatsoever in the references of record that a battery-powered sewer and drain cleaner
could be controlled by a motor and voltage control mechanism. Therefore, claim 7 is
5 believed to be allowable. Claim 7 is also believed to be allowable for the reasons set
forth with respect to claim 1.

Newly added claim 8 depends from claim 1 and adds the limitation thereto that
the motor has sufficient torque and shaft speed to rotate the drum at approximately
10 230-350 rpm. Inasmuch as the references of record do not remotely teach or suggest
that the Salecker machine could be battery-operated, there can be no teaching or
suggestion that a DC motor could be used which is a high speed, high torque motor
having sufficient torque and shaft speed to rotate the drum at approximately 230-350
rpm. Therefore, the structure set forth in claim 8 is believed to be allowable over the
15 references of record. Claim 8 is also believed to be allowable for the reasons set forth
with respect to claim 1.

The foregoing has clearly shown that claims 1-7 are not rendered obvious
under 35 U.S.C. § 103(a). Accordingly, the Examiner should withdraw the rejection
20 and the claims should be allowed.

No fees or extensions of time are believed to be due in connection with this
Amendment; however, please consider this a request for any extension inadvertently
omitted and charge any additional fees to Deposit Account No. 502093.



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Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that the original of this AMENDMENT for DAVID W. MANNING ET AL., Serial No. 10/624,360, was mailed by first class mail, postage prepaid, to Mail Stop Amendment, Commissioner for Patents, Alexandria, VA 22313, on this 11 day of October, 2005.

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DENNIS L. THOMTE

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